LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 16 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 513.

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, Debtor,
Appellant,

vs.

UNITED STATES OF AMERICA et al.,
Appellees.

Appeal from the United States District Court for the Eastern District of Missouri, Eastern Division.

BRIEF

For Omaha Grain Exchange, a Corporation, Intervenor, Appellee.

B. W. La TOURETTE,
G. M. REBMAN,
314 North Broadway,
St. Louis 2, Missouri,
Attorneys for Intervenor,
Appellee.

ST. LOUIS LAW PRINTING CO., 415 North Eighth Street. CEntral 4477.

INDEX.

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Summary of argument	3
Argument	5
Conclusion	8
Appendix 1	11

Cases Cited.

Baltimore & Ohio Southwestern Railroad Company v. Settle, 260 U. S. 166, 170-171 6

Boston & Maine R. Co. v. Hooker, 233 U. S. 97, 118 4

Faweus Machine Co. v. United States, 282 U. S. 375, 378 4

Interstate Commerce Commission v. Union Pacific Railroad Co., 222 U. S. 541, 547 ..... 3, 7

Mississippi Valley Barge Line v. United States, 292 U. S. 282, 286, 287 ..... 3, 7

New York, N. H. & H. R. R. v. Interstate Commerce Commission, 200 U. S. 361, 402 3-4

Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 315 4

Rochester Tel. Corp. v. United States, 307 U. S. 125, 146 ..... 3, 7

St. Louis Southwestern Railway Company v. United States, 245 U. S. 136, 139 (Note 2) 6

Through Routes and Through Rates, 12 I. C. C. 163, 166 5

U. S. v. Jackson, 280 U. S. 183, 193 4
United States v. American Trucking Assn., 310 U. S. 534, 549 4
United States v. Carolina Freight Carriers Corp., 315 U. S. 475, 482, 490 ..... 3, 7
United States v. Pan American Petroleum Corp., 304 U. S. 156, 158 ..... 3, 7
Virginian R. Co. v. United States, 272 U. S. 658, 665 .. 3, 6, 7

Statute Cited.

Sec. 15, Paragraphs (3) and (4), Part I, Interstate Commerce Act, 54 Stat. L. 911 (49 U. S. C., Sec. 15) .. 5

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951.

No. 513.

GUY A. THOMPSON, Trustee, Missouri Pacific Railroad Company, Debtor,
Appellant,

vs.

UNITED STATES OF AMERICA et al.,
Appellees.

Appeal from the United States District Court for the Eastern District of Missouri, Eastern Division.

BRIEF

For Omaha Grain Exchange, a Corporation, Intervenor, Appellee.

OPINIONS BELOW.

Appellant in its Brief has correctly referred to the decision of the specially constituted three judge District Court and the reports of the Interstate Commerce Commission.

JURISDICTION.

Intervenor does not question the jurisdiction of this Court in the instant case.

THE QUESTIONS PRESENTED.

1. The primary question presented by this appeal is whether the findings of the Interstate Commerce Commission, below, are substantiated by facts of record before said Commission in the proceedings which gave rise to the instant appeal, and whether said findings are consonant with the law.

SUMMARY OF ARGUMENT.

As above pointed out, the only question before this Court in the instant appeal is that of whether the Commission's findings, conclusion and order are supported by the evidence and are in accordance with law.

If this Court finds, as did the Court below, that there was "sufficient evidentiary basis for the conclusion of the Commission," then this Court must affirm the judgment of the Court below, provided the statutory standards have been properly applied. **Interstate Commerce Commission v. Union Pacific Railroad Co.**, 222 U. S. 541, 547; **Mississippi Valley Barge Line v. United States**, 292 U. S. 282, 286, 287; **Rochester Tel. Corp. v. United States**, 307 U. S. 125, 146; **United States v. Carolina Freight Carriers Corp.**, 315 U. S. 475, 482, 490; **Virginian R. Co. v. United States**, 272 U. S. 658, 665.

The weight and value of the evidence and the inferences to be drawn therefrom are matters solely for the Commission's determination. **United States v. Carolina Freight Carriers Corp.**, supra; **United States v. Pan American Petroleum Corp.**, 304 U. S. 156, 158.

The correctness of the Commission's reasoning, the soundness of its conclusions, even alleged inconsistencies with findings made in other proceedings are of no concern to the Courts. **Interstate Commerce Commission v. Union Pacific Railroad Co.**, supra; **Virginian R. Co. v. United States**, supra.

In the light of the above, it becomes apparent that the findings of the Commission in the instant matter may not be set aside, as they were based on substantial evidence of record, and were entered in conformity with the law. **Virginian R. Co. v. United States**, 272 U. S. 658; **New York**,

N. H. & H. R. R. v. Interstate Commerce Commission, 200 U. S. 361, 402; **Boston & Maine R. Co. v. Hooker**, 233 U. S. 97, 118; **U. S. v. Jackson**, 280 U. S. 183, 193; **Fawcus Machine Co. v. United States**, 282 U. S. 375, 378; **Norwegian Nitrogen Co. v. United States**, 288 U. S. 294, 315; **United States v. American Trucking Assn.**, 310 U. S. 534, 549.

ARGUMENT.

The only objection which appellant raises to the order of the Commission in the instant matter is to the finding by the Interstate Commerce Commission that a through route exists between the Kansas points involved herein and Omaha, Nebraska, over the lines of the Missouri Pacific Railroad and the Chicago, Burlington and Quincy Railroad, with joinder at Concordia, Kansas.

Appellant contends that such finding is not justified as there is not any evidence of record to support it. Appellee and this Intervenor on the other hand insist that the record adequately justifies the findings. In approaching this question from the standpoint of the reviewing Court, certain well-defined and oft-repeated basic principles may well be reiterated.

In the first instance, it should be noted that the provisions of the Statute, Sec. 15, Paragraphs (3) and (4), Part I, Interstate Commerce Act, 54 Stat. L. 911 (49 U. S. C., Sec. 15), are only applicable in an instance where the railroads have not, through their own act, established a through route. The provisions of said section have no application where a through route already exists. The Congress did not define "through route" in its enactment. Accordingly, we must find our definition in decisions of the Interstate Commerce Commission.

The Interstate Commerce Commission in **Through Routes and Through Rates**, 12 I. C. C. 163, 166, defined a "Through Route" as early as 1907, as follows:

> "A 'through route' is an arrangement, express or implied, between connecting railroads for the continuous carriage of goods from the originating point on the line of one carrier to destination on the line of

another. Through carriage implies a 'through rate'. This 'through rate' is not necessarily a 'joint rate'. It may be merely an aggregation of separate rates fixed independently by the several carriers forming the 'through route'; as where the 'through rate' is 'the sum of the locals' on the several connecting lines or is the sum of lower rates otherwise separately established by them for through transportation."

The Supreme Court of the United States has accepted this definition by the Interstate Commerce Commission and referred to it in various cases which have come before it. **St. Louis Southwestern Railway Company v. United States**, 245 U. S. 136, 139 (Note 2); **Baltimore & Ohio Southwestern Railroad Company v. Settle**, 260 U. S. 166, 170-171; **Virginian Railway Co. v. United States**, 272 U. S. 658, 666-667.

Having before us, then, the above definition, coupled with the procedures outlined by the Commission in the matter of **Through Routes and Through Rates**, supra, for determination of the existence of a through route, it is submitted that the record made before the Commission in the instant case contains substantial evidence to support the finding of the Interstate Commerce Commission that a through route existed over the lines of the Missouri Pacific from origin points west of Concordia, Kansas, and the Chicago, Burlington and Quincy Railroads to Omaha, Nebraska.

In view of the sufficiency of the evidence, it is submitted that neither the Lower Court nor this Court has any concern as to whether, from the same evidence, it may have made a different finding by reason of other and different reasoning or judgment. The sole inquiry of this Court, as well as that of the Lower Court, being to determine whether or not the conclusion of the Commission are

based on sufficient evidence. **Interstate Commerce Commission v. Union Pacific Railroad Co.**, 222 U. S. 541, 547; **Mississippi Valley Barge Line v. United States**, 292 U. S. 282, 286, 287; **Rochester Tel. Corp. v. United States**, 307 U. S. 125, 146; **United States v. Carolina Freight Carriers Corp.**, 315 U. S. 475, 482, 490; **Virginian R. Co. v. United States**, 272 U. S. 658, 665.

It is further submitted that the weight and value of the evidence, as well as the inferences to be draw therefrom, are primarily matters solely for the Commission's determination and that the only question remaining before this Court is the legal question of whether or not the conclusions of the Commission are entered in conformity with the law. **United States v. Carolina Freight Carriers Corp.**, supra; **United States v. Pan American Petroleum Corp.**, 304 U. S. 156, 158.

We submit that since the Commission's definition of "through routes" in the matter of "Through Routes and Through Rates," supra, has been sustained by this Court in a number of cases, and further, in view of the fact that Congress, despite other amendments to Part I of the Interstate Commerce Act, has not at any time seen fit to define the term "Through Routes" in language or effect other and different from that as set out by the Commission in "Through Routes and Through Rates," supra, such definition has become the law and must rule this case.

On authority of **Virginian Railway Company v. United States**, 272 U. S. 658, and other cases, it is submitted that the findings and conclusions of the Interstate Commerce Commission in the instant case do conform with the law and may not be disturbed or set aside on this account.

The matters which the Appellant raises in its brief, insofar as they pertain to questions other than the primary

questions before this Court, as above referred to, can be of no concern. Such questions as to the flow of grain from the Kansas origins involved, as well as questions relating to the alleged effect of the Commission's Order upon other carriers, cannot be of concern to this Court in the state of the present record. Neither is the argument that the Appellee, and particularly the intervening Appellee, The Omaha Grain Exchange, are not left remediless, of any useful purpose in the presentation of this case before this Court, inasmuch as it has no bearing upon the only issue which can be before the Court, namely, whether the finding of the Commission in the instant case that a "through route" existed was based upon sufficient evidence and was entered in conformity with law. Accordingly, we have not addressed ourselves to these questions in this brief; neither have we addressed ourselves to the argument proposed that the Omaha Grain Exchange did not, by its complaint, seek to have the Commission prescribe a through route, nor are we persuaded by the argument that the Omaha Grain Exchange, in its complaint, allegedly pleaded that such through route did not exist, for, even had such been the case, the finding of the Commission of the existence of a through route based upon the evidence of record in the instant case cannot be disturbed merely because some private party may have, without knowledge of all the facts, alleged certain conclusions which, of course, cannot be binding upon the Interstate Commerce Commission, the findings of which Commission must be based solely upon the evidence of record. The conclusions stated by any party before it are not evidence.

CONCLUSION.

In conclusion, it is respectfully submitted that the conclusions of the Commission in the case before this Court were based on substantial evidence of record and were en-

tered in conformity with the law. For which reasons the decision and judgment below must be affirmed.

Respectfully submitted,

B. W. La TOURETTE,

G. M. REBMAN,
314 North Broadway,
St. Louis 2, Missouri,
Attorneys for Intervenor, Appellee.

Receipt Acknowledged ..... Date .....

.....

APPENDIX 1.

Statutes Involved.

Section 15, Paragraphs (3) and (4), Part I, Interstate Commerce Act, 54 Stat. L. 911 (49 U. S. C., Sec. 15), which read as follows:

"(3) The Commission may, and it shall whenever deemed by it to be necessary or desirable in the public interest, after full hearing upon complaint or upon its own initiative without complaint, establish through routes, joint classifications, and joint rates, fares, or charges, applicable to the transportation of passengers or property by carriers subject to this part, or by carriers by railroad subject to this part and common carriers by water subject to Part III, or the maxima or minima, or maxima and minima, to be charged, and the divisions of such rates, fares, or charges as hereinafter provided, and the terms and conditions under which such through routes shall be operated. The Commission shall not, however, establish any through route, classification, or practice, or any rate, fare, or charge, between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business, and railroads of a different character. If any tariff or schedule canceling any through route or joint rate, fare, charge, or classification, without the consent of all carriers parties thereto or authorization by the Commission, is suspended by the Commission for investigation, the burden of proof shall be upon the carrier or carriers proposing such cancellation to show that it is consistent with the public interest, without regard to the provisions of paragraph (4) of this section."

"(4) In establishing any such through route the Commission shall not (except as provided in section 3, and except where one of the carriers is a water line) require any carrier by railroad, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, (a) unless such inclusion of lines would make the through route unreasonably long as compared with another practicable through route which could otherwise be established, or (b) unless the Commission finds that the through route proposed to be established is needed in order to provide adequate, and more efficient or more economic, transportation: **Provided, however,** That in prescribing through routes the Commission shall, so far as is consistent with the public interest, and subject to the foregoing limitations in clauses (a) and (b), give reasonable preference to the carrier by railroad which originates the traffic. No through route and joint rates applicable thereto shall be established by the Commission for the purpose of assisting any carrier that would participate therein to meet its financial needs. In time of shortage of equipment, congestion of traffic, or other emergency declared by the Commission, it may (either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleadings by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine) establish temporarily such through routes as in its opinion are necessary or desirable in the public interest."